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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,867	12/17/2001	Thomas Joseph Kopacz	1443.009US1	5354

7590 12/20/2004

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EXAMINER

BOYD, JENNIFER A

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 12/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/021,867

Applicant(s)

KOPACZ ET AL.

Examiner

Jennifer A Boyd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 and 50-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 and 50-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Response to Amendment***

1. The Applicant's Amendments and Accompanying Remarks, filed September 20, 2004, have been entered and have been carefully considered. Claims 60 – 63 are added and claims 1 – 33 and 50 – 63 are pending. In view of Applicant's Arguments, the Examiner withdraws the 35 USC 112, 1<sup>st</sup> paragraph rejection as detailed in paragraphs 3 – 4 of the Office Action dated June 17, 2004. In view of Applicant's admission of common ownership of Lange (US 2002/0127937 A1), the Examiner withdraws the previously pending rejection as detailed in paragraph 5 of the Office Action dated June 17, 2004. After an updated search, additional prior art has been found which renders the invention as currently claimed to be unpatentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Connor (US 5,455,110).

Connor is directed to nonwoven laminated fabrics (Title). Connor teaches that fabric comprises a first flat spunbonded web formed from thermoplastic fibers, a three-dimensional nonwoven meltblown web formed from thermoplastic fibers and a second flat spunbond web formed from thermoplastic fibers (Abstract). The Examiner equates the three-dimensional material to Applicant's "tufted material". It should be noted that Connor does not discuss the use of elastic materials or fibers between the at least two outer layers which meets Applicant's requirement.

5. Claims 1 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Latimer (US 2001/0009711 A1).

Latimer is directed to resilient fluid management materials for personal care products (Title). Latimer teaches that a laminate may be made comprising one or more materials corrugated together sandwiched between a layer of nonwoven material on each side to create a sandwich-like construction (page 6, [0077]). As shown in Figures 9 – 10, two materials may be corrugated together. The Examiner equates the corrugated material to Applicant's "tufted material". It should be noted that Latimer does not discuss the use of elastic materials or fibers between the at least two outer layers which meets Applicant's requirement.

6. Claims 1 – 2, 4 – 7, 12 – 15, 22 – 33, 50 – 59, 60 – 61 and 63 are rejected under 35 U.S.C. 102(e) as being anticipated by Lindsay et al. (US 6,610,173). 3, 8 – 11, 16 – 21

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Lindsay is directed to a three-dimensional tissue and methods for making the same (Title).

As to claims 1 – 2 and 5 - 7, Lindsay teaches using wet pressing to imprint a tissue web to create a repeating pattern of protrusions having asymmetrical structures (Abstract). The Examiner equates the imprinted tissue web to Applicant's "tufted material". Lindsay notes that the paper webs of the invention are laminated with additional plies of tissue or layers of nonwoven materials such as spunbond or meltblown webs, or other synthetic or natural materials (column 31, lines 15 – 25). Lindsay suggests that in a product comprising two or more plies of tissue, such as bath tissue, a pair of plies of the nonwoven materials may be applied to the opposing surfaces (column 31, lines 15 – 25). The Examiner equates the pair of plies to Applicant's "at least two layers of tufted material". The two layers of tufted material would provide Applicant's bi-layer construction. It should be noted that Lindsay does not discuss the inclusion of elastic materials or fibers between the two outer layers meeting Applicant's requirement. It should be noted that the Examiner has not given any patentable weight to Applicant's limitation "wire-tufted" because the method of forming the laminate is not germane to the issue of patentability of the device itself.

As to claims 12 – 15, Lindsay teaches that the protrusions, or Applicant's "tufts", have a height or macro-caliper of *at least* 0.10 mm, which overlaps with Applicant's claimed ranges.

As to claim 22, Lindsay teaches using wet pressing to imprint a tissue web to create a repeating pattern of protrusions having asymmetrical structures (Abstract). The Examiner equates the imprinted tissue web to Applicant's "tufted material". Lindsay notes that the paper webs of the invention are laminated with additional plies of tissue or layers of

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nonwoven materials such as spunbond or meltblown webs, or other synthetic or natural materials (column 31, lines 15 – 25). Lindsay suggests that in a product comprising two or more plies of tissue, such as bath tissue, a pair of plies of the nonwoven materials may be applied to the opposing surfaces (column 31, lines 15 – 25). It should be noted that Lindsay does not discuss the inclusion of elastic materials or fibers meeting Applicant's requirements. Lindsay teaches that the tissue product may further comprise a lotion or emollient (column 33, lines 25 – 35), equated to Applicant's "added liquid".

As to claims 23 – 24, Lindsay teaches the inclusion of perfume, lotion or emollients and health care additives such as menthol (column 33, lines 25 – 35).

As to claim 25, Lindsay teaches that the composite web may be used as a wet wipe (column 33, lines 5 – 25).

As to claim 26, Lindsay teaches that the composite web may be used for bath tissue, facial tissue, paper towels, wipers, absorbent articles and the like (column 33, lines 25 – 35). It should be noted that these are all disposable products.

As to claim 27, Lindsay teaches that the composite web comprises a repeated pattern of protrusions (Abstract), implying that the protrusions are separated and individualized.

As to claims 28 – 31, Lindsay teaches that the protrusions, or Applicant's "tufts", have a height or macro-caliper of *at least* 0.10 mm, which overlaps with Applicant's claimed ranges.

As to claims 32 and 33, Lindsay teaches that the projections are repeating, therefore an identifiable and uniform pattern would occur (Abstract).

As to claims 50 – 57, Lindsay teaches using wet pressing to imprint a tissue web

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to create a repeating pattern of protrusions having asymmetrical structures (Abstract). The Examiner equates the imprinted tissue web to Applicant's "tufted material". Lindsay notes that the paper webs of the invention are laminated with additional plies of tissue or layers of nonwoven materials such as spunbond or meltblown webs, or other synthetic or natural materials (column 31, lines 15 – 25). Lindsay suggests that in a product comprising two or more plies of tissue, such as bath tissue, a pair of plies of the nonwoven materials may be applied to the opposing surfaces (column 31, lines 15 – 25). It should be noted that the pair of plies is equated to Applicant's "two layers of tufted material". Lindsay teaches that the protrusions, or Applicant's "tufts", have a height or macro-caliper of *at least* 0.10 mm, which overlaps with Applicant's claimed ranges. Lindsay teaches that the tissue product may further comprise a lotion or emollient (column 33, lines 25 – 35), equated to Applicant's "added liquid".

As to claims 58 - 59, Lindsay teaches that the projections are repeating, therefore an identifiable and uniform pattern would occur (Abstract).

As to claims 60 – 61 and 63, Lindsay teaches that the paper webs are laminated with additional layers of tissue or nonwoven materials (column 31, lines 1 – 25). It should be noted that this limitation is open-ended, therefore, additional layers may be added to the composite described above.

#### ***Claim Rejections - 35 USC § 103***

7. Claims 3, 8 – 11, 16 – 21 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindsay et al. (US 6,610,173) in view of Amundson et al. (US 6,028,018).

Lindsay is directed to a three-dimensional tissue and methods for making the same

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(Title).

As to claims 16 and 18, Lindsay teaches using wet pressing to imprint a tissue web to create a repeating pattern of protrusions having asymmetrical structures (Abstract). The Examiner equates the imprinted tissue web to Applicant's "tufted material". Lindsay notes that the paper webs of the invention are laminated with additional plies of tissue or layers of nonwoven materials such as spunbond or meltblown webs, or other synthetic or natural materials (column 31, lines 15 – 25). Lindsay suggests that in a product comprising two or more plies of tissue, such as bath tissue, a pair of plies of the nonwoven materials may be applied to the opposing surfaces (column 31, lines 15 – 25). The Examiner equates the pair of plies to Applicant's "at least two layers of tufted material". The two layers of tufted material would provide Applicant's bi-layer construction. It should be noted that Lindsay does not discuss the inclusion of elastic materials or fibers between the two outer layers meeting Applicant's requirement. It should be noted that the Examiner has not given any patentable weight to Applicant's limitation "wire-tufted" because the method of forming the laminate is not germane to the issue of patentability of the device itself.

As to claims 19 – 20, Lindsay teaches that the projections are repeating, therefore an identifiable and uniform pattern would occur (Abstract).

As to claim 21, Lindsay teaches that the composite web may be used for bath tissue, facial tissue, paper towels, wipers, absorbent articles and the like (column 33, lines 25 – 35).

As to claim 62, Lindsay teaches that the paper webs are laminated with additional layers of tissue or nonwoven materials (column 31, lines 1 – 25). It should be noted that this limitation is open-ended, therefore, additional layers may be added to the composite described above.



Lindsay fails to teach that the tufted material is a meltblown material comprising polypropylene, polyethylene polybutylene, copolymers and mixtures and blends thereof as required by claims 3, 9 – 10 and 16. Lindsay fails to teach that the nonwoven material of the outer layers is a non-woven absorbent material as required by claim 4 and is a coform as required by claims 8 and 16. Lindsay fails to teach that the inner layers are thermally bondable as required by claim 11, specifically bondable at each tuft as required by claim 17.

Amundson is directed to a wet wipe with improved softness (Title). Amundson teaches that the different layers of the wipe are configured to provide the optimum balance of physical properties, such as softness, flexibility, strength, integrity and resiliency (column 2, lines 38 – 50). Amundson teaches a layered basesheet which contains a liquid (column 2, lines 59 – 65). Amundson teaches that in one embodiment the wet wipe comprises an inner, strong, and resilient layer of meltblown polypropylene fibers and the outer soft layers comprise a coform layer of polyethylene and wood pulp fibers (column 7, lines 1 – 10). The Examiner equates the outer soft layers to Applicant's "two outer layers of non-woven material". It should be noted that the coform material of the non-woven layer would be absorbent as required by claim 4 because it contains wood pulp fibers. Additionally, layers would be capable of being thermally bonded as required by claim 11 because they contain polypropylene fibers which are known to be thermoplastic fibers. As to claim 11, if the Applicant requires that the outer nonwoven layers are thermally bonded rather than capable of being thermally bonded, it is suggested that the Applicant revise the claim language. It should be noted that Amundson does not discuss the

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inclusion of elastic materials or fibers between the two outer layers meeting Applicant's requirement.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use coform layers as suggested by Amundson as the outer layers of the composite of Lindsay motivated by the desire to create a composite suitable for a wet wipe with absorbent and soft outer layers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a meltblown polypropylene web as suggested by Amundson as the inner layer of the composite of Lindsay motivated by the desire to create composite suitable for a wet wipe with a strong and resilient inner layer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer Boyd  
December 9, 2004



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